

January 24, 2002

Cynthia B. Hall, Deputy City Attorney  
City of Norfolk  
Department of Law  
810 Union Street, 900 City Hall Building  
Norfolk, VA 23510

Dear Ms. Hall:

This is a response to your letter of January 10, 2002 in which you present the City of Norfolk's position on the effective date of the new Chesapeake Bay Preservation Area Designation and Management Regulations and how that relates to the enforcement of the required 100-foot Resource Protection Area (RPA) buffer. In that letter you indicate that confusion exists regarding former Executive Director Michael Clower's December 21, 2002 statement that localities are to immediately begin implementing local codes consistent with enforcement of the full RPA buffer. You further state that " (t)hese regulations are not stand-alone enforcement provisions. Rather, they are regulations that enable and/or require a locality to amend its local code. A locality has no enforcement authority on the changes until its local code is amended."

It has long been the Board and Department's position that some localities were misapplying and misinterpreting the buffer equivalency provision contained in the "old" Regulations. Through adoption of the Regulation amendments that are to become effective on March 1, 2002, the Board has unequivocally taken the position that the full buffer is to be enforced. On March 1, 2002, the "old" Regulations will become void and will carry no force of law. Under the Dillon Rule, the fifty-foot buffer equivalency language contained in the City of Norfolk Code will be rendered obsolete, as State law no longer supports the language, and implementation of the full 100-foot buffer requirement will be mandatory.

It is the Chesapeake Bay Local Assistance Board's position that Section 11-2.9(c) of the City of Norfolk Code **already** provides for implementation of the full 100-foot RPA buffer. That language, which was supported under the old regulations, is still supported under the new regulations and is thus still valid. Mr. Clower was communicating that this provision must now be interpreted and implemented consistent with the Board's intent, as more clearly expressed in

the revised Regulations, regardless of whether the local code has been amended to remove the buffer equivalency provision.

I hope that this clears up any confusion that may exist concerning this issue. If you have any questions, or need additional information, please contact me. My telephone number is 804-225-3440 or 1-800-CHES BAY.

Sincerely,

C. Scott Crafton  
Acting Executive Director

CSC/ljt

c: Martha Little  
Lee Tyson